

Message Text

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ACTION L-03

INFO OCT-01 EA-11 ADP-00 CPR-02 SCA-01 SCS-03 TRSE-00 PM-07

CIAE-00 INR-10 NSAE-00 RSC-01 RSR-01 PA-03 PRS-01

USIA-12 OMB-01 /057 W

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R 030920 Z JUL 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 6370

INFO SECDEF WASHDC

CSAF (JACI)

NAVY JAG WASHDC

CINCPAC

CINCPACAF

CINCPACREPPHIL

13 TH AF

405 TH CSG

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 7624

E. O. 11652: GDS

TAGS: MARR, RP

SUBJ: PHIL INCOME TAX EVASION CASE: RE: U. S. CITIZEN EMPLOYEES

AT SUBIC NAVAL BASE

REF: A. MANILA 10830 (DTG 100752 NOV 72)

B. MANILA 2616 (DTG 220842 Z MAR 72)

C. MANILA 4278 (DTG 110352 Z MAY 72)

D. CINCPACREPPHIL DTG 121025 Z MAY 72

BEGIN SUMMARY: IN TWO OPINIONS BY SEPARATE BRANCHES OF THE COURT OF FIRST INSTANCE, OLONGAPO CITY, THE COURTS FOUND TEN U. S. CITIZEN EMPLOYEES AT SUBIC NAVAL BASE GUILTY OF NOT FILING PHILIPPINE INCOME TAX RETURNS FOR THE YEAR 1969. DEFENDANTS' ATTORNEY PREPARING APPEAL. NEWS MEDIA HAS CARRIED ARTICLES CONCERNING CASE. CASES ARE OF IMPORTANCE BECAUSE OF THEIR APPLICATION TO THE PROVISIONS OF THE US/ RP MBA AND THE BROAD LANGUAGE
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USED BY THE COURT WHICH COULD BE INTERPRETED TO REQUIRE ALL U. S. CITIZEN EMPLOYEES AT THE BASES WHO HAVE RESIDED IN THE PHILIPPINES FOR ANY LENGTH OF TIME TO FILE PHIL INCOME TAX RETURNS. EMB WILL CONTACT GOP DEPT OF FINANCE AND DEPT OF JUSTICE INFORMALLY TO POINT OUT FAILURE OF OLONGAPO COURTS TO TAKE ACCOUNT OF ART. XII OF MBA AND TO PUT GOP ON NOTICE THAT APPEAL WILL BE FILED. APPELLATE PROCESS IS LENGTHY SO MATTER SHOULD BE IN LIMBO FOR SOME TIME. IN ANY CASE, COURT OF APPEALS HAS GOOD RECORD IN REVERSING OVER-ENTHUSIASTIC OR UNINFORMED RULINGS OF LOCAL JUDGES. END SUMMARY.

1. IN AN OPINION SIGNED ON 28 MAY 73, BUT ONLY LAST WEEK SERVED ON DEFENDANTS, BRANCH I OF THE OLONGAPO CITY COURT OF FIRST INSTANCE (CFI) FOUND FIVE OF THE ORIGINAL DEFENDANTS GUILTY OF VIOLATING PHIL INTERNAL REVENUE CODE BY NOT FILING 1969 PHIL INCOME TAX RETURN. THE COURT FINED EACH DEFENDANT 2,000 PESOS AND COSTS. THE OPINION OF BRANCH III OF THE OLONGAPO CFI, IN WHICH THE REMAINING DEFENDANTS WERE ALSO FOUND GUILTY AND SIMILARLY FINED, IS NOT YET AVAILABLE TO EMBASSY BUT WE EXPECT TO GET IT SHORTLY.

2. COUNSEL FOR THE DEFENDANTS HAD RELIED UPON ART. XII (2) OF THE 1947 US/RP MILITARY BASES AGREEMENT (MBA) AS PROVIDING THE EXEMPTION FROM FILING PHIL INCOME TAX. DEFENDANTS POINTED OUT THEY WERE ONLY TEMPORARY RESIDENTS OF THE PHILS AS INDICATED BY THEIR TEMPORARY VISITOR VISAS ISSUED TO THEM BY THE PHIL GOVERNMENT. BRANCH I OF THE OLONGAPO CFI IN A POORLY WORDED DECISION IGNORED THE MBA PROVISION AND QUOTED A PHIL INTERNAL REVENUE REGULATION THAT DEFINED RESIDENT ALIENS. THE REGULATION STATES QUOTE AN ALIEN ACTUALLY PRESENT IN THE PHILIPPINES WHO IS NOT A MERE TRANSIENT OR SOJOURNER IS A RESIDENT OF THE PHILIPPINES FOR PURPOSES OF THE INCOME TAX UNQUOTE. THE COURT THEN POINTED OUT THAT THREE OF THE FIVE DEFENDANTS WERE ALL BORN IN THE PHILIPPINES; MIGRATED TO U. S. FOR VARIOUS PERIODS OF TIME; RETURNED AND RESIDED CONTINUOUSLY IN THE PHILIPPINES SINCE 1958, 1962, 1965 RESPECTIVELY; ARE MARRIED TO FILIPINO CITIZENS; AND HAVE ACQUIRED REAL PROPERTY IN THE PHILIPPINES BUT NOT IN U. S. CONFIDENTIAL

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(THE OTHER TWO DEFENDANTS HAVE HAD CONTINUOUS RESIDENCE IN PHILIPPINES SINCE 1951 AND 1967.) THE COURT THEN DISCUSSED THE CONCEPT OF RESIDENCE AND DOMICILE AND DETERMINED THAT EVEN THOUGH ALL DEFENDANTS STATED THEY PLANNED TO RETURN TO THE U. S., THAT THIS WAS INSUFFICIENT TO OVERCOME OTHER FACTS THAT PROVED, IN THE COURTS' S OPINION, THEY WERE MORE THAN TEMPORARY RESIDENTS AND WERE IN FACT

RESIDENT ALIENS AS DEFINED IN THE CITED INCOME TAX REGULATION.

3. IF COURT HAD ONLY USED ABOVE REASONING IN DECISION, CASES COULD HAVE BEEN INTERPRETED TO APPLY MERELY TO THE TYPE OF U. S. CITIZEN EMPLOYEES DESCRIBED. HOWEVER THE COURT WENT ON TO STATE:

QUOTE ASSUMING THAT THE SAID ACCUSED ARE NOT RESIDENT ALIENS WITHIN THE CONTEMPLATION OF SECTION 45 (A)(1)(B) OF THE TAX CODE AS THEY CLAIM TO BE, STILL THEY ARE NEVERTHELESS REQUIRED TO FILE THEIR RETURN UNDER PARAGRAPH (A)(2) OF THE SAID SECTION. SAID SECTION 45(A)(2) REQUIRES EVERY NON- RESIDENT ALIEN DERIVING INCOME FROM SOURCES WITHIN THE PHILIPPINES TO FILE AN INCOME TAX RETURN. THE WORD " SOURCES" HAS BEEN INTERPRETED AS THE ACTIVITY, PROPERTY OR SERVICE GIVING RISE TO THE INCOME . . . THE SALARIES OF THE ACCUSED WERE INCOME CREATED FROM ACTIVITY OR SERVICE IN THE UNITED STATES NAVAL BASE. THIS ACTIVITY OR SERVICE TOOK PLACE IN THE PHILIPPINES SINCE THE U. S. MILITARY BASES IN THIS COUNTRY ARE NOT CONSIDERED FOREIGN SOIL. . . THESE SALARIES, THEREFORE, CAME FROM SOURCES WITHIN THE PHILIPPINES AND HENCE, THE ALIENS EARNING THE SAME, WHETHER RESIDENT OR NOT, ARE REQUIRED TO FILE INCOME TAX RETURN. END QUOTE. THEORETICALLY, THEREFORE, THE RULING EGREGIOUSLY VOIDS THE EXEMPTION FROM PHIL INCOME TAXES ON INCOME FROM U. S. SOURCES FOR ALL U. S. BASE WORKERS AND DEPENDENTS SET FORTH IN ART. XII OF THE MBA.

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C O N F I D E N T I A L SECTION 2 OF 2 MANILA 7624

4. THE CASES FOR THE DEFENDANTS ARE BEING HANDLED BY ATTORNEY ANCHETA OF THE QUASHA LAW FIRM AND HE STATES THAT THEY ARE INTENDING TO APPEAL DECISION. APPEAL MUST BE FILED BY 10 JULY. EMBOFFS ARE MEETING WITH ANCHETA 5 JULY TO DISCUSS ISSUES OF CASE. AS ANCHETA IS RETAINED BY THE INDIVIDUAL DEFENDANTS, THE EMBASSY AND SUBIC ARE NOT IN A POSITION TO REQUIRE ATTORNEY TO FOLLOW RECOMMENDATIONS, ALTHOUGH AT PRESENT TIME USG AND DEFENDANTS' INTERESTS COINCIDE AND THEREFORE ANTICIPATE NO DIFFICULTY IN THIS REGARD.

5. AN ARTICLE ON CASES BY AP CORRESPONDENT ARNOLD ZEITLIN APPEARED IN LOCAL BULLETIN TODAY AND ALSO THE 29 JUNE ISSUE OF STARS AND STRIPES. HE QUOTES REVENUE COMMISSIONER VERA AS ORDERING HIS DISTRICT OFFICER IN OLONGAPO CITY TO NOTIFY U. S. CIVILIANS ON BASE TO FILE RETURNS AND HAS VERA STATING: " WE WANTED TO ESTABLISH THE PRINCIPLE THAT THOSE PEOPLE ARE RESIDENT ALIENS REQUIRED TO PAY
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TAXES HERE." ZEITLIN ALSO QUOTES EMBASSY LEGAL OFFICER AS STATING, " ON PRINCIPLE WE WOULD NOT LIKE OUR PEOPLE COVERED BY STATUS OF FORCES ACTS TO FILE. WE DO NOT DO IT ANYWHERE ELSE." HE ALSO ATTRIBUTED TO EMB LEGAL OFFICER THE COMMENT THAT THE EMBASSY WOULD PROBABLY NOT ACT AS LONG AS CASE REMAINS IN THE PHIL COURTS. FYI ZEITLIN DISCUSSED CASE WITH EMB LEGAL OFFICER OVER TELEPHONE AFTER BEING REFERRED BY USIS. LEGAL OFFICER INFORMED HIM THAT HE HAD NOT YET OBTAINED A COPY OF THE DECISION AND THEREFORE COULD NOT DISCUSS CONTENTS OF DECISION. IN GENERAL DISCUSSION THAT FOLLOWED, ZEITLIN ASKED WHAT ART. XII OF MBA STATED AND CONTENT OF ARTICLE WAS READ TO HIM AND THE GENERAL PRINCIPLE OF TAXATION EXEMPTIONS FOR U. S. FORCES PERSONNEL IN HOST COUNTRIES WAS BRIEFLY DISCUSSED. HE ASKED IF USG CIVILIAN EMPLOYEES UNDER OTHER SOFA PAID TAXES ON U. S. SALARY TO HOST GOVERNMENT AND WAS INFORMED THEY DID NOT. IN REPLY TO QUESTION OF WHAT EMBASSY INTENDED TO DO, LEGAL OFFICER REPORTED THAT NORMALLY CASES LIKE THIS WOULD BE APPEALED BY DEFENDANTS; THEREFORE, THERE WOULD USUALLY BE NO NEED FOR THE EMBASSY TO TAKE ACTION, IF ANY, UNTIL CASE WAS FINALLY RESOLVED BY THE PHILIPPINE COURTS. INFO PROVIDED AP WAS PURPORTEDLY FOR BACKGROUND. END FYI.

6. COMMENT: IT IS STILL TOO EARLY TO KNOW THE FULL
RAMIFICATIONS OF THESE CASES EVEN IF AFFIRMED BY APPELLATE
COURT. CHIEF, INTERNATIONAL LAW, SUBIC LAW CENTER, HAD
OPPORTUNITY TO INFORMALLY DISCUSS CASE WITH ONE OF THE
JUDGES INVOLVED AND THE JUDGE INDICATED THAT OPINION WAS
LIMITED TO THE PECULIAR FACTS SURROUNDING THESE PARTICULAR
DEFENDANTS. NEITHER EMBASSY NOR SUBIC HAS RECEIVED RELIABLE
OR OFFICIAL INFORMATION TO DATE THAT PHIL GOVERNMENT PLANS
TO REQUIRE ALL U. S. CIVILIAN EMPLOYEES TO FILE RETURNS AS
REPORTED IN NEWS ARTICLES. IF SUCH ACTION IS TAKEN PRIOR
TO APPELLATE COURT DECISION, IT MAY REQUIRE EMBASSY TO
FORMALLY BRING TO GOP ATTENTION THE APPROPRIATE PROVISIONS
OF THE MBA. IN MEANTIME EMBASSY WILL MAKE REPRESENTATIONS
TO SECRETARY OF JUSTICE AND STRESS U. S. CONCERN OVER FAILURE
OF OLONGAPO CFI TO ENFORCE AN INTERNATIONAL AGREEMENT. WE
WILL PUSH JUSTICE DEPT TO NOTE THAT APPEALS WILL BE FILED
BY DEFENDANTS. EMBASSY WILL ALSO DISCUSS CASE WITH BUREAU
OF INTERNAL REVENUE TO INFORM BIR THAT RULING BEING APPEALED
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AND TO RECOMMEND AGAINST ACTION DURING APPEAL PROCESS. IF
GOP DOES NOT TAKE PRECIPITOUS ACTION, NORMALLY SLOW APPELLATE
PROCESS SHOULD KEEP MATTER ON ICE FOR SOME TIME. COURT OF
APPEALS ACTION WHETHER AFFIRMING, OVERTURNING OR LIMITING CFI
RULING CANNOT BE PREDICTED, BUT APPEALS COURT HAS GOOD
RECORD IN REVERSING OVER-ENTHUSIASTIC OR UNIFORMED RULINGS
BY LOWER COURTS ON MATTERS AFFECTING THE BASES.

6. FOR CLARK AND SUBIC: EMBASSY SYMPATHETIC TO NATURAL
CONCERN OF CIVILIAN WORKERS AT BASES OVER AP STORY. AFTER
CONSULTATION WITH QUASHA FIRM ATTORNEY ANCHETA AND INFORMAL
EXPLORATION WITH GOP OVER ITS OFFICIAL ATTITUDE TOWARD OLONGAPO
CFI RULINGS, WE BELIEVE IT WOULD BE USEFUL TO ISSUE STATEMENT
WHICH WILL SET RECORD STRAIGHT FOR USE BY BASE MEDIA.

5. COPY OF DECISION POUCHED TO EA/ PHL. WHEN SECOND DECISION
RECEIVED IT ALSO WILL BE POUCHED.
HAMILTON

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